

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL MARTIN SWANSON,

Defendant-Appellant.

UNPUBLISHED

January 16, 2007

No. 259633

Wayne Circuit Court

LC No. 04-009127

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii) (less than five kilograms). Defendant was sentenced to 12 months' probation. We affirm.

I

On June 18, 2004, defendant was arrested after police officers observed him standing on a sidewalk in Detroit, holding a sign that read, "Purchase pot right here legally." Defendant was also holding a sandwich bag, which contained marijuana, and in a backpack next to him were ten additional sandwich bags of marijuana. Defendant is the self-described founder of the National Case Evaluation Tribunal ("National Tribunal"), which purportedly distributes marijuana to patients who claim to have a medical necessity for it.

II

Defendant presents numerous issues on appeal; however, his arguments consist merely of enumerated, general or cursory statements in support of his claims, with little or no citation to authority. Defendant has failed to properly present his issues for appeal.

"It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position Failure to brief a question on appeal is tantamount to abandoning it." *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001) (citation omitted).

In any event, defendant's arguments fail to establish any basis for sustaining his claims on their merits. Defendant explains that the underlying purpose of his conduct was essentially to secure legal recognition of the National Tribunal as a court-sanctioned distributor of marijuana. Defendant reiterates his testimony and arguments from his jury trial, urging this Court to reverse his conviction and allow defendant to operate the National Tribunal in a "Friend of the Court" or similar capacity to make initial determinations in medical marijuana cases, which then would be subject to legal review in the courts. We find no factual or legal basis for granting the requested relief. To the extent that defendant has presented specific arguments with respect to the issues presented, we briefly address those arguments.

III

Defendant argues that this Court should appoint the National Tribunal as a Friend of the Court in order to determine whether individuals may possess marijuana for medicinal purposes. We disagree. We review this unpreserved issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

"The intent of the Legislature in enacting the Friend of the Court Act, MCL 552.501 *et seq.* [], was to create an investigative and fact-finding arm of the circuit court in domestic relations matters." *D'Allessandro v Ely*, 173 Mich App 788, 800; 434 NW2d 662 (1988). Further, the Friend of the Court Act operates within the framework of the Child Custody Act, MCL 722.21 *et seq.*, to provide methods of child custody dispute resolution. *Harvey v Harvey*, 470 Mich 186, 189; 680 NW2d 835 (2004). Although this Court has broad discretion to grant relief as a case may require, MCR 7.216(A)(7), we find no basis for appointing the National Tribunal to act in a "Friend of the Court" or similar capacity.

IV

Defendant argues that the trial court erred in submitting to the jury the issue of whether defendant violated MCL 333.7401(2)(d)(iii). We disagree. We review this unpreserved issue for plain error affecting substantial rights. *Carines*, *supra* at 763.

Defendant was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Whether defendant's acts constituted a violation of this statute was a question of fact, and therefore, within the province of the jury to determine. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Thus, the trial court was bound to submit this issue to the jury; defendant has failed to show plain error in this regard. *Id.* at 637 n 15; *Carines*, *supra* at 763.

V

Defendant argues that there was insufficient evidence to support his conviction. We disagree. In determining the sufficiency of the evidence, this Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of possession with intent to deliver marijuana are: (1) the recovered substance is marijuana; (2) the marijuana (or a mixture containing marijuana) is in an amount weighing less than five kilograms; (3) the defendant was not authorized to possess the marijuana; and (4) the defendant knowingly possessed the marijuana with the intent to deliver. MCL 333.7401(2)(d)(iii); *Wolfe, supra* at 516-517. To be guilty of possessing contraband, actual or constructive possession must be shown. *Id.* at 519-520.

Here, defendant was holding a sandwich bag, and in a backpack next to him were ten sandwich bags containing a total of 50.42 grams of marijuana. Defendant admitted that the substance in the bags was marijuana and that his goal was to get arrested. One of the arresting officers noted that marijuana packaged in this manner is typically for sale. In addition, before his arrest, defendant was standing outside of a Greektown casino and holding a sign that read, "Purchase pot right here legally." Therefore, sufficient evidence existed to support defendant's conviction.

Although defendant claimed that he did not intend to sell the marijuana, an actor's intent may be inferred from all the facts and circumstances. *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499, disapproved on other grounds 469 Mich 966 (2003). Also, issues of witness credibility are within the province of the jury to resolve. *Wolfe, supra* at 514-515. In addition, this Court must resolve all conflicts of evidence in the favor of the prosecutor, who need not negate every reasonable theory of innocence, but only prove the case beyond a reasonable doubt despite any contradictory evidence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

VI

Defendant argues that even if the legality of his conduct was a question for the jury, the trial court prevented him from making a fair presentation to the jury. We disagree that any alleged error rendered the proceedings unfair.

Defendant argues that the trial court improperly limited his testimony and erred in refusing to allow him to testify about the "pure legal merits" of his medical marijuana distribution system. We disagree. This Court reviews a trial court's decision regarding the admissibility of evidence for abuse of discretion. *People v Matuszak*, 263 Mich App 42, 47; 687 NW2d 342 (2004). "Under MRE 701, a nonexpert witness' opinion testimony is limited to those opinions and inferences which are rationally based on the witness' own perceptions. Legal conclusions are not included." *Temborius v Slatkin*, 157 Mich App 587, 602; 403 NW2d 821 (1986). Therefore, defendant's argument fails.

Defendant argues that the trial court failed to provide the instructions and verdict form he requested. Although defendant questioned the instructions and verdict form after voir dire, he expressly approved of the instructions and verdict form after closing arguments. Therefore defendant has waived this issue on appeal. A defendant's express approval of a jury instruction or verdict form, as opposed to a mere failure to object, constitutes a waiver that extinguishes any error, thereby precluding appellate review. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); see also *Dedes v Asch*, 233 Mich App 329, 334-335; 590 NW2d 605 (1998), overruled on other grounds *Morales v Auto-Owners Ins Co (After Remand)*, 469 Mich 487 (2003).

VII

Defendant argues that the trial court failed to permit his expert witness to testify at trial via telephone. Although defendant filed a motion requesting that Dr. Lester Grinspoon be allowed to testify as an expert witness via telephone, the trial court entered an order indicating only that Grinspoon would be recognized as an expert. The order did not address whether Grinspoon would be permitted to testify via telephone at trial, and we find no further reference to this matter in the record. We find no basis for defendant's assignment of error.

Affirmed.

/s/ Stephen L. Borrello

/s/ Janet T. Neff

/s/ Jessica R. Cooper